

<b>Title:</b>	<b>Right to Work in the UK Guidance</b>
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## Introduction

As part of the ongoing strategy to improve the way the UK tackles illegal working, the government has changed the law on employing illegal workers. The Immigration, Asylum and Nationality Act 2006 came into force on 29<sup>th</sup> February 2008 and from this date, employers may be liable to pay a civil penalty if they employ someone who is:

- Subject to immigration control;
- Aged over 16 years; and
- Not entitled to undertake the work in question

Civil penalties can be up to £10,000 per illegal worker. Under the law, you will have an excuse against liability to pay a civil penalty for employing an illegal migrant if you check and copy certain original documents before someone starts work with the Council. If the person has a time limit on their stay in the UK, repeat checks on their documents will take place at least once a year to have the excuse.

## How can I prevent illegal working without discriminating?

You should treat all job applicants in the same way at each stage of the recruitment process. Do not assume that a foreign national or someone from an ethnic minority has no right to work in the UK.

The Council's recruitment and selection process requires **all** applicants to bring to interview or selection a document, or a combination of documents, as proof of who they are and whether they are eligible to work in the UK. The Council will retain a photocopy of these documents and applicants will sign a declaration form during their interview.

For successful applicants the photocopies of the original documents will be placed on their personal file. These documents are kept for the duration of the individual's employment and for a further six years after their employment has ceased.

## Document Checks

The applicant will be told to bring right to work in the UK documentation at interview. You should check the documents for authenticity when you photocopy them and are out of sight of the prospective employee.

The following steps should be followed when checking for validity:

### Step 1

The applicant (or existing employee, when carrying out repeat checks) must provide an original document or documents from List A or List B (see Appendix 1).

Please note that the provision of a National Insurance number in isolation is not sufficient evidence. It must be presented in combination with one of the appropriate documents from Lists A and B.

### Step 2

Check the document(s) are valid and that the prospective employee or current employee is the person named in the document, and check that the documents allow them to do the work in question.

For each document presented, you should check:

- **Photographs** - check that photographs are consistent with the documentation. Are they consistent with the appearance of your job applicant? For instance the hairline, eyes etc as these elements don't change.
- **Date of Birth** - cross-check dates of birth - are the dates of birth the same on all documents?
- **Expiry Dates** - check expiry dates of documents to ensure dates have not passed and the endorsements valid?
- **Dates** – any dates must be cross-referenced with identity documents and work permits. If they do not match, contact HR First Response on ext. 4343 or 0800 032 564.
- **Stamps and endorsements** – is your job applicant able to do the type of work you are offering? Are they permitted to work the number of hours, or for the period of time that you are offering? For example, students may work up to 20 hours per week during term-time. In addition, some working holidaymakers are restricted to working for only one year, which is stated clearly on their visa. If you are unsure check with HR First Response on ext. 4343 or 0800 032 564.
- **Names** – do names correspond on all documents? Are further documents required to clarify this? Names could differ due to marriage, adoption, etc.
- **Have the documents been tampered?**

If the applicant gives you two documents which have different names, ask them for a further document to explain the reason for this e.g. marriage certificate, divorce decree, deed poll or statutory declaration.

You are not expected to be an expert on forged documents. If you have any doubts, please contact HR First Response on ext. 4343 or 0800 032 5642.

### **Step 3**

You must make a copy of the relevant page or pages of the document, in a format which cannot be subsequently altered, for example, a photocopy or scan.

In the case of a passport or other travel documents, the following parts must be photocopied or scanned:

- The document's front cover and any page containing the holder's personal details. You should copy any page that provides details of nationality, his or her photograph, date of birth, signature, date of expiry or biometric details; and
- Any page containing UK Government endorsements indicating that the holder has an entitlement to be in the UK and is entitled to undertake the work in question.

Other documents should be copied in their entirety including the new plastic Leave to Remain / Entry Clearance cards.

### **Step 4**

The applicant will in front of you sign the declaration form stating they have provided proof of their right to work in the UK. You complete the declaration form at Appendix 2.

### **Step 5**

All recruitment documentation, along with the copies of the documents, should be forwarded to the Resourcing Team to process.

No appointment letters will be issued until documentation with regards to the eligibility to work in the United Kingdom has been verified and copied.

### **What should I do if I have concerns about the validity of the documents?**

If you are not satisfied that the applicant is the rightful holder of the documents presented to you or have any other concerns about the validity of the documents contact HR First Response on ext. 4343 or 0800 032 5642.

There is no legal right to seize original documents if they are suspected of being fraudulent and the process should carry on without alerting the document holder that there may be an issue.

You will still need to photocopy the documents, as agreed, and still ask the prospective employee to sign the declaration form.

HR First Response will then take the necessary action by contacting the United Kingdom Border Agency who will then verify their immigration status and eligibility for them to work in the United Kingdom.

If the checks received from the UK Border Agency state that they are not eligible to work in the UK, the prospective employee will receive a letter from HR First Response stating that they have not been successful at interview. They do not need to know they have been unsuccessful because of their eligibility to work in the UK. The UK Border Agency will deal with this.

### **Carrying out repeat checks**

If an employee presents a document from List B, HR First Response will carry out follow-up checks by repeating steps 1 – 3 at least once every 12 months.

Employees will be invited to attend a meeting with HR First Response to produce their documentation. The employee's line manager will also be notified of when this meeting will take place.

If an employee with a List B document or documents does not provide the correct documentation, the Council will be liable for payment of a civil penalty if found to be working illegally in the UK.

### **Contacts**

#### HR First Response

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